**Book Accounts: Open and Stated Accounts: Statute of Limitations.**—The invariable custom of merchants is to render monthly statements to their customers upon their accounts. Unless the debtor gives notice of disapproval, his assent is presumed after the lapse of a reasonable time and he becomes bound by the account as stated.[1] Under the doctrine announced in Auzerais v. Naglee,[2] which has been followed in subsequent decisions,[3] an action may be brought upon the account stated within two years of its rendition.

Since 1907, the statute of limitation[4] upon open book accounts has been four years, and merchants have relied upon that time within which to collect their accounts. A recent decision[5] of the Appellate Court for the Second District will come as a surprise to merchants, for therein it is held that by sending the statements the statutory period is cut down to two years from their rendition.

It appeared in the principal case that, at the time of the sale, the plaintiff's bookkeeper made an entry of it upon the corporation books, and thereafter rendered monthly statements to the defendant corporation, which the latter conceded to be correct by making no objection to them. In its complaint the plaintiff alleged as one cause of action the original indebtedness, and as another, the account stated. The court says, "Conceding that the entry upon plaintiff's books of this single transaction constituted an open book account, nevertheless, when a statement of account was rendered, and its correctness admitted, the same as a stated account superseded the original account and furnished a new contract." Upon the theory that the new cause of action superseded the old, the court denied relief because the "stated account" was barred under section 339 of the Code of Civil Procedure.

It is submitted that the decision goes too far, as it practically defeats the four year limitation on open book accounts, is contrary to precedents of pleading, and in effect establishes a novation not intended by the parties.

If a party does not intend to rely solely upon an "account stated" he may join with it a count upon the original indebtedness. If he fail upon the first count, he is not precluded from recovery upon the second.[6] It is universally held that, in the absence of an agreement, the giving of a bill, draft, or note will not discharge the

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[1] Hendy v. March, (1888) 75 Cal. 566, 17 Pac. 702; Mayberry v. Cook, (1898) 121 Cal. 588, 54 Pac. 95; Atkinson v. Golden State Title Co., (1913) 16 Cal. App. Dec. 284.

[2] (1887) 74 Cal. 60, 15 Pac. 371.

[3] Kahn v. Edwards, (1888) 75 Cal. 192, 16 Pac. 779; Baird v. Crank, (1893) 98 Cal. 293, 33 Pac. 63; Converse v. Scott, (1902) 137 Cal. 243, 70 Pac. 13.

[4] Code of Civil Procedure, (Cal.) sec. 337.

[5] National Lumber Co. v. Tejunga Valley Rock Co., et al., (decided Sept. 20, 1913) 17 Cal. App. Dec. 294.

[6] Johnson v. Tyng, (1896) 1 N. Y. App. Div. 610, 37 N. Y. Supp. 516; Goings v. Patten, (1863) 17 Abb. Pr. (N. Y.) 339.

original indebtedness,[7] and it would seem that such a situation is stronger than that presented in the principal case. To plead an accord without showing also a satisfaction would not discharge the original debt,[8] and it would seem on principle that an unsatisfied "account stated" should not preclude a recovery upon the original account when it appears that it was not the intent of the parties that the account stated should be substituted for the original account so as to bring the action within section 1531 of the Civil Code, which reads: "Novation is made by the substitution of a new obligation between the same parties, with intent to extinguish the old obligation."

Where it appears that there are items on one side only or, as in the principal case, the entry consists of a single item, it has been held that the creditor may disregard the account stated, and recover upon the original indebtedness; and this is especially true where the account stated is implied and not express.[9]

D. A. M.

**Carriers: Exclusive Grant of Privileges to Baggage Company.**— The Railroad Commission of California has decided that a common carrier may grant the exclusive right to a baggage company of soliciting business upon its trains, boats, and grounds and of checking baggage from residences, hotels and other points of origin; and that the refusal to grant the privilege to another baggage company does not violate section 2170 of the Civil Code providing that "a common carrier must not give a preference in time, price or otherwise to one person over another."[1]

The question of a carrier's duty toward express companies, baggage companies, cab companies and other like appended services has been the source of much litigation in the United States, and some conflict of opinion. The principles governing such cases are necessarily closely connected.

Railroad companies have never held themselves out to be common carriers of express companies, and hence, independently of special contract, a railroad is not obliged to permit the express business to be carried on over its lines.[2] A carrier may also prevent the solicitation of business by baggage agents among its passengers.[3] With respect to its terminals, a common carrier has all the rights of an owner in possession; except such as are inconsistent with the public use for which it holds its franchise, and in the exercise of this

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[7] 30 Cyc. 1194 and cases cited.

[8] Vanbebber v. Plunkett, (1895) 26 Ore. 562, 38 Pac. 707, 27 L. R. A. 811.

[9] Buxton v. Edward, (1883) 134 Mass. 567; Cross v. Moore, (1851) 23 Vt. 482.

[1] Red Line Tourist Ag. v. S. P. et al., (Aug. 30, 1913) Cal. Ry. Com. Rep.; Dec. No. 923, Case No. 414.

[2] The Express Cases, (1886) 117 U. S. 1; Pfister v. Ry. Co., (1886) 70 Cal. 169, 11 Pac. 686.

[3] The D. R. Martin, (1873) 11 Blatch 233, Fed. Cas. No. 1030.